

HONORABLE RONALD B. LEIGHTON



06-CV-05194-ORD

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CLERK U.S. DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT TACOMA BY DEPUTY		

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

ROGER J. DAVIS,)
Petitioner/Plaintiff,) NO. C 06-5194 RBL
v.) [proposed] AGREED ORDER
known as "Pierce Transit"), a municipal corporation.) AND CONSENT DECREE
Respondent/Defendant.)

)

This case involves two types of claims by Petitioner/Plaintiff Roger Davis against Respondent/Defendant Pierce Transit, which have been removed from state court: (1) claims for judicial review of Pierce Transit's decision to deny Mr. Davis arranged transportation for persons with disabilities as required by the Americans with Disabilities Act (ADA) (commonly known as "paratransit" and/or Pierce Transit's "Shuttle" service); and (2) claims for declaratory and injunctive relief challenging on ADA and due process grounds various aspects of Pierce Transit's policies and procedures for determining Shuttle eligibility.

AGREED ORDER AND CONSENT DECREE - 1
CASE NO. C 06-5194 RBL

Northwest Justice Project
715 Tacoma Avenue South
Tacoma, Washington 98402
Phone: (253) 272-7879 Fax: (253) 272-8226

1 THIS MATTER having come before the court on the ____ day of _____, 2007,
2 upon the parties' JOINT MOTION FOR ENTRY OF AN AGREED ORDER AND CONSENT
3 DECREE, it is now therefore

4 **ORDERED, ADJUDGED and DECREED** that the parties' JOINT MOTION FOR
5 ENTRY OF AN AGREED ORDER AND CONSENT DECREE is **GRANTED** as provided
6 further herein.

7 **I. AGREED ORDER ON WRIT OF REVIEW.**

- 8 1. The parties agree that Pierce Transit will approve Mr. Davis for full Pierce Transit
9 Shuttle service, ADA Category 1 with an effective date of the date of this Order, and
10 will not conduct a review of Mr. Davis' Pierce Transit ADA Category 1 shuttle
11 eligibility for at least three years from the date of this Order pursuant to Pierce Transit's
12 three year Certification process.
- 13 2. The parties further agree that, based on the foregoing, there is no just reason for delay on
14 Petitioner's claims on Review of Pierce Transit's denial of his eligibility for Shuttle
15 service while his other claims for declaratory and injunctive relief are being resolved
16 pursuant to the Consent Decree entered herewith.
- 17 3. It is therefore **ORDERED, ADJUDGED and DECREED** that Pierce Transit will
18 approve Mr. Davis for full Pierce Transit Shuttle service, ADA Category 1 with an
19 effective date of the date of this Order, and will not conduct a review of Mr. Davis'
20 Pierce Transit ADA Category 1 shuttle eligibility for at least three years from the date of
21 this Order pursuant to Pierce Transit's three year Certification process. On this basis,
22 the Petitioner's claims on the WRIT OF REVIEW are hereby Dismissed with prejudice,
23 with each party to bear their own fees and costs in connection therewith.

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2 **II. CONSENT DECREE.**

3 The parties agree as follows regarding Mr. Davis' claims for declaratory and injunctive relief:

- 4 1. The parties wish to avoid the uncertainties, costs and burdens of further litigation in this
5 matter. The Defendant does not admit any liability or wrong doing on its part. This
6 consent decree does not constitute any admission on Defendant's part of any liability or
7 wrongdoing,
- 8 2. There shall be no judgment for or award of costs or attorneys fees to any party in this
9 matter.
- 10 3. Pierce Transit's Board shall, by no later than November 19, 2007, adopt revised policies
11 regarding its Shuttle eligibility process which shall comply with the ADA. Specifically:
12 a. Pierce Transit's policies and procedures will describe Shuttle eligibility criteria and
13 the eligibility determination process.
14 b. Pierce Transit Shuttle applicants claiming cognitive or mental heath impairments
15 whose Shuttle eligibility cannot be determined based on written application
16 materials and/or professional verifications will be provided the opportunity to have
17 a cognitive functional assessment using standardized cognitive assessment tools, or
18 a psychological assessment conducted by a contracted third party.
19 c. Pierce Transit's Shuttle eligibility determination policies and procedures will assure
20 that all Shuttle applicants are provided notice of initial Shuttle eligibility
21 determinations that comply with the notice requirements contained in 49 CFR
22 Appendix D to Part 37 Sec. 37.125 as of the effective date of this agreement.
- 23

1 4. Pierce Transit's Board shall, no later than November 19, 2007, adopt revised policies
2 regarding its appeal process for adverse shuttle eligibility determinations which shall
3 comply with the ADA and constitutional due process guarantees. Pierce Transit's appeal
4 process will require that:

5 a. The appellant has the right to:

- 6 i. inspect in advance of the hearing any documentary and other physical
7 evidence that the agency intends to introduce at the hearing;
- 8 ii. be represented by his or her own advocate ,
- 9 iii. question and confront witnesses presented by the agency,
- 10 iv. present witnesses and the introduction of documentary and other physical
11 evidence as he or she desires, and
- 12 v. present argument to the hearing examiner.
- 13 vi. if the appeal involves a proposed termination or reduction in Shuttle
14 services, the appellant shall have the right to continue to receive his or her
15 pre-termination or reduction level of service pending the issuance of the
16 hearing examiner's final written decision in the case, for up to 30 days.

17 b. The hearing examiner:

- 18 i. must be provided with adequate information and training on ADA
19 paratransit eligibility criteria, and Pierce Transit's shuttle eligibility
20 determination and appeals process and procedures,
- 21 ii. must not have been involved in the agency's initial eligibility
22 determination,

- iii. must not be in a supervisory or subordinate role to any individual involved in the agency's initial eligibility determination,
 - iv. must make his/her eligibility determination based solely on the documentary evidence, observations and testimony presented at the hearing, along with his/her observations and professional expertise and knowledge,
 - v. must not engage in *ex parte* off-the-record contact regarding the case with agency staff or other individuals,
 - vi. must issue a written decision setting forth the reasons for the decision ,

c. As with the initial notifications of shuttle eligibility determinations, Pierce Transit's policies and procedures will require that the hearing examiner's appeal decision will be in writing, and will comply with the notice requirements contained in 49 CFR Appendix D to Part 37 Sec. 37.125 as of the effective date of this agreement, and will be transmitted to the appellant in all cases. In the case of an adverse hearing examiner decision, the notice will advise appellants of their right to seek outside, independent advice regarding their legal rights.

The signature of Pierce Transit's counsel hereon shall constitute actual notice of this order to Pierce Transit and its officers, agents, servants, employees, and those persons in active concert or participation with them in the operation of Pierce Transit's Shuttle service.

The Court will retain jurisdiction for purposes of enforcing this Consent Decree through 90 days following the agreed upon date for performance reflected above. Unless plaintiff has initiated enforcement proceedings by this date, counsel for Mr. Davis and Pierce Transit

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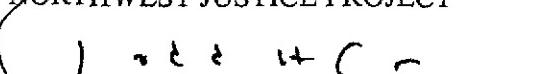
1 will jointly move for the dismissal of this matter as fully compromised and settled, with
2 each party to bear their own fees and costs herein.

3 7. This matter is continued pending the parties joint motion for dismissal. The case
4 schedule stricken pending completion of the actions and deadlines in the Consent Decree.

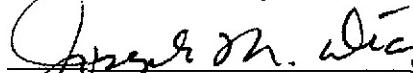
5 Dated this 1st day of May, 2007.

6 
7 UNITED STATES DISTRICT JUDGE/
8 UNITED STATES MAGISTRATE JUDGE

9 Presented by:
10 NORTHWEST JUSTICE PROJECT

11 
12 TODD CARLISLE, WSBA #25208

13 And by:

14 DAVIES PEARSON, P.C.

15 Joseph M. Diaz, WSBA #16170
Attorneys for Respondent/Defendant

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24 AGREED ORDER AND CONSENT DECREE - 6
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